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No. 324.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

THE UNITED STATES OF AMERICA, *Appellant*,

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

STATEMENT AS TO JURISDICTION.

IN THE

District Court of the United States

For the Northern District of Illinois

Eastern District

UNITED STATES OF AMERICA, *Plaintiff*, v. SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES W. ZERLINER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRORO, HELEN FERRORO and JOHN J. CHALMERS, *Defendants*.	Civil Action No. 48 C 1023

Statement as to Jurisdiction

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America, plaintiff herein files its statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on a direct appeal to review the decision of the United States District Court entered in this cause July 26, 1949. A petition for appeal is presented to the District Court herewith, to-wit, on August 23d, 1949.

JURISDICTION

This appeal is prosecuted from a judgment of the District Court which in an opinion accompanying the judgment held invalid an Act of Congress, the Hous-

ing and Rent Act of 1947, as amended by Public Law 31, 81st Congress, 1st Session (P. L. 129, 422 and 464 of the 80th Congress, P. L. 31, 81st Congress, 1st Session). The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 1252 of Title 28 of the United States Code, Judiciary and Judicial Procedure (Act of June 25, 1948; C. 646, 62 Stat. 902; 28 U. S. C. 1252).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case on direct appeal.

Bowles v. Willingham, 321 U. S. 503.
Woods v. Miller Co., 333 U. S. 138.

The Statutes Involved

The pertinent portions of the Housing and Rent Acts of 1947, (Public Law 129, 80th Congress, 1st Session), as amended by the Acts of 1948 (Public Law 464, 80th Congress, 2nd Session), and 1949 (Public Law 31, 81st Congress, 1st Session), are set out verbatim in Appendix B to this statement.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. The constitutionality of Title II thereof was sustained by the Supreme Court in the case of *Woods v. Miller Co.*, 333 U. S. 138. The 1947 Act was amended and extended by the Housing and Rent Act of 1948, Public Law 464, 80th Congress and by the Housing and Rent Act of 1949, Public Law 31, 81st Congress. The case presents the question of the constitutionality of Section 204(j) of the Housing and Rent Act of 1947, a section added to the Act by the Act of 1949, *infra*, p. 46, as well as the further question of the constitutionality of the Housing and Rent Act as a whole because of the inclusion of Section 204.

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The Housing and Rent Act of 1947 fixed maximum rents in those areas which on March 1, 1947 were under rent control pursuant to the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 *et seq.*). Such rents were those in effect on June 30, 1947 and the Act forbade the demand for, or receipt of rents in excess thereof. (Sec. 204(b), *infra*, Local Rent Advisory Boards were provided for which could recommend decontrol to the Housing Expediter, and the Housing Expediter was authorized on his own initiative to remove controls when the demand for housing accommodations was sufficiently met. Specific grounds for eviction were prescribed (Sec. 209) p. 48. The 1948 Act gave Local Advisory Boards greater authority and provided for appeals to the Emergency Court of Appeals from disapprovals by the Housing Expediter of their recommendations for decontrol (Sec. 204(c) (e), pp. 30, 31. The 1949 Act amplified the field of action of the Local Advisory Boards and added Section 204(j) *infra*, which permitted a state to establish state rent control (Sec. 204 (j) (1)), or to determine that rent control is no longer necessary in its territory or any part thereof (Sec. 204(j) (2), and which further permitted incorporated municipalities to decontrol rents within their territorial limits (Sec. 204(j) (3), *infra*, p. 48.

Suits under the 1949 Act were to be brought in the name of the United States of America (Sec. 206(b), *infra*, p. 48. The specific grounds for eviction were no longer set forth in the Act, but were to be established by the Housing Expediter by appropriate regulation. (Sec. 209), *infra*, p. 48.

The Issues and Ruling Below

The present action was instituted by the Housing Expediter under the Housing and Rent Act of 1947, as amended by the Housing and Rent Act of 1948, to en-

join the defendant, Shoreline Cooperative Apartments, Inc., from violating the provisions of Section 209(a) (2) of the Act by evicting tenants of a cooperatively owned apartment house, when less than 65% of the stockholders were tenants in occupancy. The other defendants were purchasers of stock who desired possession of the apartments. While the suit was pending the 1949 Act was adopted, effective April 1, 1949. A supplemental complaint was filed substituting the United States as plaintiff and seeking to enjoin violations of Section 209 of the amended Act and the Regulations issued pursuant thereto,[1] which in so far as pertinent here continued in effect the substance of the prior statute. The defendants filed motions to dismiss the complaint on the grounds that the complaint failed to state a cause of action upon which relief could be granted, and that Section 209 was void because it violated the constitutional rights of the defendants.

The District Court dismissed the case, holding that Section 204(j) of the Housing and Rent Act of 1949 (which was not directly involved) was an unconstitutional delegation of power by Congress, and that, since Congress would not have passed the 1949 Act without Section 204(j), the separability clause (Sections 303 of the 1949 Act) providing for the separation of invalid provisions were ineffective to justify the operation of the Act without Section 204 (j). The entire Act was thus held unconstitutional.

On July 26, 1949, judgment was entered dismissing the cause of action.

The Questions are Substantial

1. Section 204(j) of the Act, as amended in 1949, provides that federal rent control shall terminate (1)

[1] 14 F. R. 1571.

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whenever the governor of any State advises the Housing Expediter that the legislature "has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of federal rent control"; (2) "if any State by law declares that Federal rent control is no longer necessary in such State or any part thereof"; and (3) if the governing body of any community after hearing finds that "there no longer exists such a shortage in rental housing accommodations as to require rent control", and its conclusion is approved by the governor of the State.

If federal administrative officials had been empowered to terminate rent control on the basis of the standards contained in Section 204 (j), there could be no doubt as to the validity of the delegation of power. The standards are not substantially different from those upheld by this Court in *Woods* v. *Miller Co.*, 333 U. S. 138, 144.

The fact that the findings which make the federal law inoperative are made by state rather than federal officials does not render the law unconstitutional. Federal laws have not infrequently been made operative or inoperative by reason of state action.[2] Cf. *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311, 326; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334; *Rupert* v. *United States*, 181 Fed. 87 (C. C. A. 8); *Griswold* v. *President*, 82 F. 2d 922 (C. C. A. 5). The Conformity Act, predecessor to the Federal Rules of Civil Procedure, required the federal courts to apply state procedural laws. R. S. 914; *Amy* v. *Watertown* (No. 1), 130 U. S. 301, 320. Cf. *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 190 (state

[2] See Mermin, *Cooperative Federalism Again*, 57 Yale Law Journal 1, 22n-23n (1947).

bankruptcy law provision adopted by federal legislation). See also *United States* v. *Jones*, 109 U. S. 513, 519, in which the Court said:

> Yet from the time of its establishment that government has been in the habit of using, with the consent of the State, their officers, tribunals, and institutions as its agents. Their use has not been deemed violative of any principle or as in any manner derogating from the sovereign authority of the federal government; but as a matter of convenience and as tending to a great saving of expense.

And this Court has upheld federal statutes providing that certain administrative orders should become effective only if approved by a specified portion of farmers in a referendum vote. *Currin* v. *Wallace*, 306 U. S. 1, 15-16; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 577-8.

Even apart from these analogies, the nature of the subject regulated makes specially appropriate the relinquishment of control to the States in the manner provided by Congress. The control of rents normally falls within the police powers of the State. The need for regulating the subject under the war powers of Congress has been exceptional, and has not been regarded as permanent. In *Woods* v. *Miller Co., supra*, in dealing with the contention that rent control under the war power might be permanent, this Court declared that "We cannot assume that Congress is not alert to its constitutional responsibility" in this respect (333 U. S., at 144). The technique adopted by Congress in Section 204(j) is a method of gradually transferring the subject from federal to State control as the necessity for federal regulation in the particular State or community diminishes. It was not unreasonable for Congress to rely upon State and local of-

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ficials to determine the needs of the local communities. And the means chosen by Congress to terminate the control under the war powers cannot be held unconstitutional unless there is no reasonable basis for them. *McCulloch* v. *Maryland*, 4 Wheat. 316, 409-10.

2. Even if it be assumed that Section 204(j) is unconstitutional the court below erred in holding the entire statute inseparable and therefore unconstitutional. The statute unquestionably can operate even if Section 204(j) is stricken as invalid. The statute still permits the Housing Expediter to decontrol rents in any area "if in his judgment the need for continuing maximum rents in such area or portion thereof • • • no longer exists". In addition, the new statute terminates of its own force on June 30, 1950, unless the President or Congress earlier so proclaims. Section 204(f), as amended.

The intention of Congress that the statute be severable is expressed in the separability clause, Section 303, *infra*, p. 51. "Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, 'divisibility and not integration is the guiding principle.' Invalid parts are to be exercised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration." *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 434. The possibility that some of the members of Congress who voted to pass the legislation might not have done so in the absence of Section 204(j) is not sufficient basis for disregarding the separability clause, which is an express statutory manifestation of legislative intention as to severability.

3. The issue is one of the gravest importance to the public welfare. Some 14,000,000 housing accommodations are presently under rent control; and the tenants will be left defenseless, both with regard to the rent they would have to pay and with regard to eviction from their dwellings, if the present decision should be allowed to stand.[3]

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

Appendix A

In the District Court of the United States
For the Northern District of Illinois
Eastern Division

TIGHE E. WOODS, HOUSING EXPEDITER, Office of the Housing Expediter, For and on behalf of the United States, *Plaintiff*, vs. SHORELINE COOPERATIVE APARTMENTS INC., a corporation, J. M. NICHOLSON, ROBERT R. LUMSDEN, CHARLES L. ZERLINER, NATHAN SUCHERMAN, SAMUEL SHRAYER, MILTON TINSLEY, FRANK FERRARO, HELEN FERRARO and JOHN J. CHALMERS, *Defendants.*	Civil Action No. 48 C 1023

The precise question for decision in this case is the validity of the Housing and Rent Act of 1949 because

[3] In *United States* v. *Mrs. Grace Hartley Emery* (S. D. Cal.), No. 9818-Y, decided August 8, 1949, Judge Yankwich upheld the constitutionality of the Housing and Rent Act of 1949, and stated that he did not agree with the decision rendered in the instant case. Copy of this decision is attached hereto in the Appendix.

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the only basis or reason for claiming jurisdiction in this Court is founded upon that Act. If the Act is constitutional and valid, I have jurisdiction to proceed and determine the issues in question. If the Act is not constitutional I have no power to proceed further. An unconstitutional Act is void at all times and for all purposes, and because jurisdiction can neither be conferred nor waived by consent of the parties it is a question that may be raised at any time in any court. It would be inadvisable for me to proceed further without deciding that basic question, and reluctant as I am to assume so grave a responsibility I must do so.

By bench announcement at the conclusion of the arguments, and after consideration of the original briefs, I have made it clear that I consider the local option provisions of the present Act to be unconstitutional and void. (Sec. 204, j. 1, 2 and 3) I shall presently express my reasons for so holding. At that time I stated that I would consider the further question as to whether or not the invalidity of those provisions rendered the entire Act void and would announce my final conclusions in a written opinion. Since that time the parties have filed additional briefs and at my request have submitted to me all those portions of the Congressional Record appearing to be pertinent to the subject, with various passages marked by counsel. I have considered all of these, together with the additional briefs, and after much study and thought am now ready to give my final decision.

Specifically, as to the so-called "local option" provisions, I have never entertained any doubt after reading the original briefs and reading the provisions themselves. No contention has been presented by any counsel in this suit, nor as far as I can learn in the halls of Congress, that this Act is based upon anything except the war powers of Congress, and frequent ref-

erences to the Congressional Record indicate that those war powers were hardly ever mentioned in debate or reports of committees. The entire theory of Congress is that it is desirable to continue rent controls for a limited time, but in the preamble to the Act it is first stated and most definitely stressed that it is desirable to be through with those controls as rapidly as possible, and the debates of Congress, as well as the preamble to the Act in question, have reference to the economic aftermath of war—none of them to continuation of hostilities nor any reference to the successful prosecution of war. In this opinion I am definitely refusing to consider any facts, although it is obvious to everyone that these rent controls are continued for economic reasons only and that they have no real reference to the prosecution of any war anywhere. Since we have signed no treaties of peace, I assume that we are still at war and that Congress still possesses full war powers. The only question is whether or not the present Act is within the power granted to Congress to declare war, and the implied power to take any act or pass any law to carry that power of declaration into full force and effect. In short, I am assuming that Congress still has the power to enact a valid Rent Control Act.

This brings into immediate focus the question of whether the Act under consideration is within those powers. Inasmuch as this law was only passed a few months ago, and there has been no opportunity for its interpretation by our highest court, I am forced to consider previous decisions on previous Acts and from there to proceed as with any other case of first impression.

Perhaps it is well to start this way. Our United States Supreme Court and the Supreme Courts of many States have many times pointed out that a fre-

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quent recurrence to fundamental principle is necessary to the maintenance of our constitutional form of government and this is especially true when legislation is passed under the war powers, because they are invariably brought forth under the fervor of patriotism and the all-prevailing desire of Congress and the Court to aid and not impede the ultimate victory which everyone desires. It has been true after every war and is true after the most recent one that the fundamental principles of the Constitution are likely to be invaded, and unless from time to time we revert to those principles we may eventually find that the liberties of the people and the limitations of the Constitution have been seriously eroded if not completely impaired.

I start with the fundamental principle that Congress has only such powers as are given to it by the Constitution or necessarily implied therefrom to carry those powers into effect, and with the second fundamental principle which is also expressed in the Constitution that all powers not therein expressly given to Congress or prohibited to the States are expressly reserved to the States and to the people. It is also necessary to consider that further constitutional provision that no State shall pass any law impairing the obligation of contract. The present controversy involves all of these provisions.

I am aware of the holdings in *Block* v. *Hirsh*, 256 U. S. 135, and *Marcus Brown Holding Company* vs. *Marcus Feldman*, 256 U. S. 170, and it may be that under those two decisions the provisions of the Constitution prohibiting any State to pass any law impairing the obligation of contract has itself materially been impaired. These cases, however, concerned the police power of Congress in the District of Columbia and the State Legislature of New York. It would be

inappropriate and unjudicial of me to utter any criticism of any decision of the United States Supreme Court. It must be pointed out, however, that it is generally conceded that outside of the District of Columbia and with other exceptions not necessary to be noted here the Congress possesses no police power (11 Am. Juris. Sec. 255), and since the case can be decided without reference to that particular point, I will pass on it.

As above indicated, I have assumed, and throughout this opinion do assume, that the war powers of Congress still exist, but it becomes instantly necessary to consider whether or not these war powers may be delegated to States, municipalities, or other subdivisions of Government. It will be noted on reading the local option provisions of this Act that no standards are set up either for the determination of basic facts or rules for guidance of the State, municipalities, or other political subdivisions, in determining whether or not they shall remain under rent control. As far as Congress is concerned it has attempted to leave the matter entirely open to arbitrary determination by each State or other subdivision to decide for itself whether or not it wants or needs rent control, and this entirely without rules or guide posts of any kind as to whether or not such rent control may be necessary in connection with the prosecution or maintenance of the war effort.

Thus, in paragraph (j), (1), it provides that whenever the Governor of any State advises the Housing Expediter that the Legislature of such State has adequately provided for the establishment and maintenance of maximum rents or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State,

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etc., all Federal control shall cease. If it were not for the cases of *Block* v. *Hirsh*, and *Marcus Brown Holding Co.* v. *Feldman, supra*, there could be little doubt that no State would have any power to establish rental controls at all, and even with those two cases in the books it is still doubtful if such power exists in any State except under some emergency exercise of police power. Certainly, no State could exercise any portion of the war power. No definition is given as to what a State must do adequately to provide for the maintenance of maximum rents. There is no guide as to what constitutes sufficient housing or what should constitute maximum rents. The effect is to leave that question to the arbitrary action of any State.

Section (j) (2) is even broader and more loose in its provisions for discarding Federal rent control. That section merely provides that if any State (without reference to any war effort or without reference to any reason or limitation on its action) declares that Federal rent control is no longer necessary in such State, or any part thereof, all controls shall be immediately dissolved. It is up to the Legislature to act reasonably or whimsically as it may see fit entirely without reference to any war effort.

Section (j) (3) provides for de-control under even more lax conditions in any incorporated city, town or village, merely upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law based upon a finding by such governing body reached as the result of public hearing held after ten days' notice that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village, provided that such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter.

No standard is laid down as to what is or what is not a shortage of rental housing accommodations, nor is there any provision as to the procedure for or findings at a public hearing or how that public hearing is to reach any conclusion upon the question of whether or not rent control is no longer necessary or desirable. Upon the general theory that there are more tenants than landlords this provision would certainly be an undemocratic and unconstitutional way of determining whether or not rents should be controlled and limitations thus kept upon the rights of citizens freely to contract.

Acts of this kind have many times been declared unconstitutional. As near as I can determine from the decided cases it is not only permissible but necessary that power be delegated to administrative officers or agencies to determine the facts and apply the law to the facts as thus determined. Illustrations of this are too numerous to mention, such as the first and second war power acts, as well as many others, but this is the first case that has come to my attention in which Congress has attempted to leave it to other legislative bodies arbitrarily to determine whether or not they would be within or without the union so far as an Act of Congress is concerned—an Act which must depend upon the war power if it has any foundation at all. I can see no difference between this situation and one in which Congress should pass a selective service law with the provision that any State which doesn't care to send soldiers may pass a law and say they did not choose to be involved, or an Interstate Commerce Act with the provision that any State that chose not to be governed thereby could declare itself out. I can see no reasonable reason to believe that an Act of Congress under its war powers can contain any such provisions as might make it inoperative at the

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option of any or all of the various states or subdivisions of States, by their arbitrary action and without guides, standards or specifications of facts.

This is not intended to indicate any doubt on my part that war powers may operate with inequality as among different States or portions of States if those inequalities necessarily result from substantial facts determined by lawful authority. Thus, I can see no objection to a Rent Control Act which is made applicable to various parts of the country depending on different states of facts and different conditions and necessities for carrying on the war, provided there is a pattern to follow and proper executive or administrative means laid out for its apportionment. Thus, when the Rent Control Act was passed it was recognized that there were vital defense areas in which controls must be exercised and these were to be determined by duly authorized administrators. Thousands of other executive orders of the first and second war powers Act were likewise delegated to administrators to determine the facts and to apply the law as the facts might warrant. The vice of the present law lies in its capriciousness, inequality of application, and total lack of any relationship between the carrying on of the war and the application of the law. It amounts to an abrogation of the power of Congress. Two or three States have already declared themselves out, thus repealing the war efforts so far as those States are concerned, and if the other States should see fit to do likewise the Act of Congress would be utterly repealed or completely emasculated without any further act of its own and without regard to any power to make or maintain war.

In the case of *Woods* v. *Miller*, 333 U. S. 138, which is relied upon by the plaintiff, the Housing Act of 1947 is sustained as against an attack based upon unlawful

delegation of the powers of Congress. However, that Act, as this one, contains the provision:

> "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect in any defense rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

Under this provision of the law the Supreme Court in the *Woods* case, speaking through Mr. Justice Douglas, said:

> "Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area *if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.* (Emphasis supplied) The powers thus delegated are far less extensive than those sustained in *Bowles vs. Willingham.* (321 U. S. 503) Nor is there here a grant of unbirdled administrative discretion. The standards prescribed passed muster under our decisions."

The vice of the present Act lies in the very fact that no authorized person is required to use any judgment and there is a grant of unbridled administrative discretion subject neither to reason nor findings of fact. This delegation of power is not to an administrator whose selection is controlled by Congress but to States. municipalities, other subdivisions or town meetings. The case is no authority for the position taken by the plaintiff but rather to the contrary.

It is a grave and serious matter for any Judge or group of Judges to hold an Act of Congress to be un-

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constitutional. Nevertheless, it must sometimes be done. It was the intention of the framers of our Constitution that Federal Judges should be removed from politics and free from the popular clamor of transitory ideas and it was their intention that the Constitution should be a charter definitely and firmly fixed and to remain forever the law of the land unless and until it might be amended as therein provided. As Judges, our oath is not to support either the legislative or executive branches of Government, but only to support the Constitution. Unless we adhere firmly to this oath and fearlessly perform our duties as we see them, and to the best of our ability, it will be found some day that the liberties of the people have been eroded and such fundamental principles as the right to private property and freely to contract with respect thereto have been lost. In this connection I am considerably impressed by the language of Mr. Justice Jackson in his special concurrence in the *Woods* case:

> "No one will question that this (war) power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by Judges under the influence of the same passions and pressures. • • •
>
> Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care. • • •
>
> I cannot accept the argument that war powers last as long as the effects and consequences of

war, for if so they are permanent—as permanent as the war debts."

It is for these reasons that I have held the local option clauses to be invalid. There remains for consideration the question of whether or not the invalidity of these clauses invalidates the entire Act. That question in turn depends upon a construction of the saving clause (Sec. 305), and the interpretation of this clause must depend upon the intention of Congress as expressed in the preamble of the Act, indicated by the debates of Congress and whether or not it is the intention of Congress that the remaining portions of the Act should prevail with the major portion of its intent expressed in the preamble removed from the Act.

Preamble to the Act of 1949 is to be found in Sections 201 (a) and (b) of the Act of 1947 which are carried forward into the Act of 1949. This preamble declares the policy of Congress under the heading "Declaration of Policy" in the following language.

> "(a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.
>
> (b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the

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attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in *defense-rental* areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted."

It is clear from a reading of this preamble, which is called a declaration of policy, that the principal object had in mind was to end that control, which it considered no longer desirable and to do so with the least possible impact upon the general economy. It is to be noted that no reference is made to a continuation of the war effort nor is there any definition of defense rental areas except as they had previously been determined by the Housing Expediter.

The principal argument for the plaintiff is based upon Section 305 of the present Act, which is as follows:

"If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances shall not be affected thereby."

It will be noted in considering this Section that the word is "provision", not the plural "provisions."

It is also to be noted that the reference "to any person or circumstance" is a customary clause added to many statutes by both State and Federal Governments intended to prevent the failure of the entire Act through the failure of some inconsequential portion thereof. A provision such as this is sometimes valid and sometimes invalid and it is a matter of judicial interpretation as to whether a saving clause of this kind can save an entire Act if the very essence and purpose of it is unconstitutional.

The debates of Congress are helpful although not controlling. A study of those debates indicates that very little thought was given to the question of constitutionality. Senators Bricker and Wiley exchanged some views on this point and some slight reference was made to it in the House, but practically all of the remarks in Congress, so far as they have been called to my attention, were directed to the economic problem of housing with no reference at all that I can find as to the necessity of this Act for the maintenance of a state of war. I must, therefore, place principal reliance on the preamble of the Act and Congress's own declaration of policy. As Congress itself stated, the principal object of the Act was to secure de-control at the earliest possible moment and with the least possible impact upon the general economy and it is entirely clear from all the sources available, including the debates in Congress, that the Act could never have passed without the local option provisions. They were the means principally relied upon as a way of returning the Government to the States and subdivisions immediately. Without these provisions there would be no way of decontrolling an area except through the powers given the administrator, and it is entirely clear from the local

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option provisions themselves that Congress did not consider those administrative means as adequate for accomplishing its declared purpose. Section 305 shows only an intention of congress that if some single provision of the Act as applied to some particular circumstance should be held unconstitutional it should not affect the remainder of the Act. Congress did not say nor could it say that if the most vital portions of the Act were invalid the remaining fragments should prevail. It is my opinion that the unconstitutional portions of this Act, if considered with its preamble, greatly outweigh all of the other provisions for de-control.

This view of the case in my opinion is fully sustained by the majority opinion in *Carter* v. *Carter Coal Co.*, 298 U. S. 238. The saving clause in that case was identical with the saving clause in this one, and everything that was said in the majority opinion in that case, beginning on page 312, is applicable to the case now under consideration. There is little point in my repeating it here because I consider myself bound by it and firmly believe it to be sound law. It is written in accordance with the general rule of frequent application that if the valid and invalid parts of a law are so bound together that the invalid part is a material inducement to the valid portion then the whole is necessarily invalid. I believe that is the situation in this case.

There is one more reason for holding this law indivisible and I think it is a conclusive one—one that closes the door on the argument. Had the Congress desired and intended to continue rent control without these local option clauses it could have done so by a simple Act extending the expiration date of the then existing law.

It follows that I must necessarily find the entire Act invalid and being invalid this Court has no jurisdiction.

The judgment will, therefore, be that the cause now is dismissed for want of jurisdiction.

/s/ ELWYN R. SHAW
United States District Judge

Summary of Federal Judge Leon R. Yankwich's Opinion

upholding 1949 Housing and Rent Act in the case of United States of America v. Mrs. Grace Hartley Emery and others. #9819-Y, August 8, 1949.

(In the above case, the defendant sought to dismiss the complaint on the ground of the unconstitutionality of the 1949 Housing and Rent Act and Judge Yankwich denied the motion to dismiss. His opinion was oral and involved rather lengthy exchange of views with counsel on various points raised. The following summary of the opinion was prepared under the direction of Judge Yankwich from the reporter's transcript and was allowed by Judge Yankwich to be released as a correct summary of the rulings.)

By Judge Leon R. Yankwich
U. S. District Judge

I do not agree with the recent decision in the case of *Woods* v. *Shoreline Cooperative Apartments, Inc.*, decided July 13, 1949, by the District Court for the Eastern Division of Illinois, wherein the Housing and Rent Act of 1949 was held unconstitutional. The present Act follows the pattern of other Rent Acts. The war emergency still exists and the United States Supreme Court has held repeatedly that war powers may be exercised for a reasonable number of years after the

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actual "shooting war" ends, to take care of actual economic dislocations that follow each war. *(Fleming* v. *Mohawk etc. Lbr. Co.,* 1947 331 U. S. 111.)

In the case of *Lewis* v. *Anderson, Secretary of Agriculture,* 72 Fed, Supp. 119, involving sugar controls, I held that administrative penalties could be imposed on retailers for violating sugar controls after the "shooting war" had ended. I used this language, which is as applicable today as on June 9, 1947:

"Wars have never actually terminated on the day 'cease-fire' orders were given. Many of them continued for decades, not so much in the form of actual fighting, but in the disruption and dislocation which they caused in the life of the nations involved. These facts, which are truisms to any student of history, apply especially to modern warfare as exemplified by the last war. The destruction and the dislocation of the economic life of both the victor and the vanquished continued and will continue for years after the actual hostilities with Germany and Japan ended. And so those who are in charge of regulating and controlling the economic life of the nations involved in the war have the difficult problem of determining when the various controls should come to an end. Wishful and unrealistic thinking call for immediate cessation of all governmental interference with economic life. Prudent statesmanship, economic or other, realizes the danger of immediate decontrol. The persons who are loudest in demanding the immediate return to free economy complains most vociferously about 'sudden decontrol.' Rightly. For economic life cannot stand 'sudden shock.' Adjustment from war to peace-time economy, if it is to be helpful, must be gradual.

"The failure to understand these fundamental economic principles is responsible for many of the conten-

tions which are now made before the courts. Some litigants wish us to adopt the view that, regardless of what the Congress does, the actual cessation actually entitles businesses or acivities under control to be relieved from it."

The United States Court of Appeals for the Ninth Circuit, on June 22, 1949, in the case of *Woods* v. *McCord*, held that the various money recoveries, whether in the form of reimbursement or otherwise, are imposed for two purposes: (1) to make a landlord repay rent unlawfully exacted, and (2) to help enforce the law. This is a complete answer to the contention made here that the Congress cannot authorize the Housing Expediter to collect sums under the jurisdictional minimums of the United States District Court. Congress may choose the forum in which it will enforce its own laws. As the Constitution does not limit the amount of the jurisdiction of the District Courts, the Congress may make jurisdiction independent of the amount involved.

On the question of delegation of legislative power, the case of *Carter* v. *Carter Coal Company*, 1936, 298 U. S. 238, has lost its force. When the Congress authorized cities to recommend decontrol after hearings, the delegation of power in that respect was no greater than that given to the advisory committees under the Agricultural Act, which many years ago I upheld in the case of *Redlands Foothill Groves* v. *Jacobs*, 30 Fed. Supp. 995. This case was upheld by the upper courts.

So the matters presented in this case are not new as far as this Court is concerned. I have ruled on similar matters in the past. If to this fact I add the obligation of lower courts to apply the presumption of constitutionality to acts of the Congress, it is evident that none of the points raised is meritorious, and I need not wait until the Supreme Court has acted on the matter.

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Appendix "B"

The Housing and Rent Act of 1947, as Amended

(Public Law 129, Eightieth Congress, approved June 30, 1947, as amended by Public Law 422, Eightieth Congress, approved February 27, 1948, Public Law 464, Eightieth Congress, approved March 30, 1948, and Public Law 31, Eighty-first Congress, approved March 30, 1949.)

AN ACT relative to maximum rents on housing accommodations; to repeal certain provisions of Public Law 388, Seventy-ninth Congress, and for other purposes.[1]

Sec. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until the close of June 30, 1950.[2]

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[1] The title of Public Law 31, 81st Congress, reads as follows: "An act to extend certain provisions of the Housing and Rent Act of 1947, as amended, and for other purposes." The title of Public Law 464, 80th Congress, reads as follows: "An act to extend certain provisions of the Housing and Rent Act of 1947, to provide for the termination of controls on maximum rents in areas and on housing accommodations where conditions justifying such controls no longer exist and for other purposes." The title of Public Law 422, 80th Congress, reads as follows: "An act to continue for a temporary period certain provisions of the Housing and Rent Act of 1947."

[2] This subsection was amended by section 203 (a) of Public Law 31, 81st Congress, to substitute "June 30, 1950" for "March 31, 1949."

This subsection was amended by section 202 (a), Public Law 464, 80th Congress, to substitute "March 31, 1949" for "March 31, 1948." The original subsection was amended by section 2, Public Law 422, 80th Congress, to substitute "the close of March 31, 1948" for "February 29, 1948." The original subsection read as follows:

"Sec. 204 (a) The Housing Expediter shall administer the powers, functions, and duties, under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948."

(b)[3] (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and subsections (h) and

[3] This subsection was amended by section 203 (b), Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (b), Public Law 464, 80th Congress, the subsection read as follows:

"SEC. 202 (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommodations within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title. In the making of adjustments to remove hardships due weight shall be given to the question as to whether or not the landlord is suffering a loss in the operation of the housing accommodations.

"(2) In any case in which a landlord and tenant, on or before December 31, 1947, in accordance with the provisions of this subsection as then in effect, voluntarily entered into a valid written lease in good faith with respect to any housing accommodations, such housing accommodations shall not be subject to any maximum rent established or maintained under the provisions of this title unless such lease is hereafter terminated or expires before March 31, 1949, in which case the maximum rent for such housing accommodations shall, through March 31, 1949, be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948: *Provided,* That the landlord and a tenant (including any new tenant) may enter into a new voluntary lease subject to the conditions, specified in paragraph (3) of this subsection, applicable with respect to landlords and tenants who have not heretofore entered into voluntary leases, except that no maximum rent need be in effect on the date of execution of such new lease.

"(3) In any case in which a landlord and tenant (including any new tenant) on or before December 31, 1948, voluntarily enter into a valid written lease in good faith (at any rental agreed upon in the lease, but not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948) with respect to any housing accommodations for which a maximum rent is in effect under this section, and such lease takes effect on or after the effective date of the Housing and Rent Act of 1948 and expires on or after December 31, 1949, and if a true and duly executed copy of such lease is filed, within 15 days after the date of execution of such lease, with the Housing Expediter, such housing accommodations shall not thereafter be subject to any maximum rent established or maintained under the provisions of this title unless such lease is terminated before March 31, 1949. If any such lease is so terminated the maximum rent (unless a subsequent lease entered into under the provisions of this paragraph is in force) shall be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948.

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(i), during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommoda-

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Footnote 3 continued

"(4) A landlord shall file a report with the Housing Expediter of any termination of a lease entered into under this subsection prior to the expiration date of the lease, including leases entered into under this subsection prior to the date of enactment of the Housing and Rent Act of 1948. Such report shall be filed within 15 days after such termination or 15 days after the effective date of such Act, whichever is the later date."

The original subsection read as follows:

"SEC. 204. (b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title."

tions within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title: *Provided, however,* That the landlord certifies that he is maintaining all services furnished as of the date determining the maximum rent and that he will continue to maintain such services so long as the adjustment in such maximum rent which may be granted continues in effect. In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and the local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement, or maintenance.

(2) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease was in effect on the effective date of the Housing and Rent Act of 1949, such housing accommodations shall be subject

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to the provisions of this title and, until such lease is terminated or expires, the maximum rent for said accommodations shall be the rent set forth in said lease.

(3) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease has heretofore terminated or expired or hereafter terminates or expires, such housing accommodations shall be subject to the provisions of this title and the maximum rent for said accommodations shall be the rent set forth in said lease, plus or minus applicable individual adjustments: *Provided, however,* That if such housing accommodations are in a defense-rental area in which a general increase in maximum rents has been or is hereafter granted, the maximum rent shall be said lease rent plus or minus applicable individual adjustments, or the maximum rent in the absence of a lease, whichever is higher.

(4) If a lease entered into under this subsection has heretofore terminated or hereafter terminates, prior to the expiration date of such lease, the landlord shall file with the Housing Expediter a report of the termination of such lease, unless a report of such termination was filed with the Housing Expediter prior to the effective date of the Housing and Rent Act of 1949. Such report shall be filed within 15 days after the date of such termination or 15 days after the effective date of the Housing and Rent Act of 1949, whichever is the later date.

(5) In order to help assure fair adjustments for tenants and small landlords, the Housing Expediter is authorized and directed to designate for every defense-rental area an officer whose function shall be to assist tenants and small landlords by—

(A) informing them concerning the conditions under which rent adjustments may be obtained;

(B) helping in the preparation of applications for rent adjustments; and

(C) providing them with such other information and services as may be necessary and appropriate.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area or portion thereof or with respect to any class of housing accommodations in any such area or portion thereof, if in his judgment the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exist, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. The Housing Expediter is further authorized and directed to remove maximum rents for any or all luxury housing accommodations in any defense-rental area or portion thereof, if in his judgment such action would result in the creation of additional rental units by conversion.[4] The Housing Expediter shall from time to time make surveys with a view to carrying out the purpose of this subsection to decontrol housing accommodations at the earliest practicable time.

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[4] This sentence was added by section 203 (c), Public Law 31, 81st Congress, to this subsection as amended by section 202 (c), Public Law 464, 80th Congress. The original subsection read as follows:

"SEC. 204 (c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

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(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e)[5] (1) The Housing Expediter is authorized and directed to create and, if necessary, continue in exist-

[5] This subsection was amended by section 203 (d), (e) and (f) of Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (d), Public Law 464, 80th Congress, this subsection read as follows:

"SEC. 204 (e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors: *Provided*, That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948) from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the court shall make recommendations to the official administering this title within its area; and before recommending any such adjustment the board shall give notice to the parties and shall hold a hearing at the request of either party. Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

"(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

"(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

"(C) Operations generally of the local rent office with particular reference to hardship cases.

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once until the termination of this Act in each defense-rental area (whether or not under Federal rent control) or such portion thereof as he may designate, local advisory board. The Housing Expediter shall, whenever in his judgment there is need therefor, create a local advisory board in any part of an area designated

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Footnote 5 continued

"(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

"(3) Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

"(4) For the purposes of paragraph (3) any recommendation of a local board as to a matter referred to in paragraph (1) (A) or (B) shall be deemed to be appropriately substantiated and in accordance with applicable law and regulations, and shall be carried into effect as hereinafter provided—

"(A) if the local board held a public hearing on such matter, at which interested persons (including representatives of the State and of political subdivisions thereof) were given a reasonable opportunity to be heard, by interpleader or otherwise, with right to be represented by counsel;

"(B) if notice of the date, time, place, and purpose of such hearing was given (i) in writing to the Governor of the State not less than fifteen days prior to such date, and (ii) by publication in a newspaper of general circulation in the area over which the local board has jurisdiction at least fifteen days prior to such date, and a second notice was given by publication in such a newspaper at least five days prior to such date;

"(C) if a copy of the local board's recommendation was filed with the Governor of the State within five days after such recommendation was mailed to the Housing Expediter;

"(D) if a record is made of the evidence adduced at the public hearing held by the local board, and the local board certifies and transmits to the Housing Expediter, with such recommendation, a transcript of such record, or of those parts of such record, upon which its recommendation is based and a written statement of its findings made upon the basis of such record; and

"(E) if the record so certified and transmitted to the Housing Expediter contains adequate and substantial evidence to support the findings and recommendation of the local board.

"If the Housing Expediter does not approve such recommendation within thirty days after the date of its receipt by him, he shall, within five days after the expiration of such thirty-day period, file such recom-

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under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were not being regulated

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Footnote 5 continued
mendation in the Emergency Court of Appeals, together with the record and statement of findings of the local board and such statement as the Housing Expediter may desire to make as to his views on the matter. The statement of the Housing Expediter may be accompanied by such supporting information as the Housing Expediter deems appropriate. Thereupon the Emergency Court of Appeals shall have jurisdiction to enter, within thirty days after the date of its receipt of such recommendation from the Housing Expediter (or within such additional period of not more than thirty days as the court may find necessary in exceptional cases), an order approving or disapproving the recommendation of the local board. The recommendation, record, and statement of findings of the local board, together with the statement and supporting information filed by the Housing Expediter, shall constitute the record before the court. If the court determines that the recommendation is not in accordance with law, or that the evidence in the record before the court, including such additional evidence as may be adduced before the court, is not of sufficient weight to justify such recommendation, the court shall enter an order disapproving such recommendation; otherwise it shall enter an order approving such recommendation. The judgment and decree of the court shall be final. The powers heretofore granted by law to the Emergency Court of Appeals are hereby continued for purposes of exercise of the jurisdiction granted by this subsection. The court shall prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this paragraph. The Housing Expediter, the local board, and representatives of the State or States involved, shall be granted, to the extent determined by the court, an opportunity to be heard, by interpleader or otherwise, with right to be represented by counsel.

"(5) Any recommendation to which paragraph (4) applies, if an order of disapproval thereof has not been entered by the Emergency Court of Appeals within the time prescribed in such paragraph, shall be carried out by the Housing Expediter—

"(A) if it is with respect to a matter referred to in paragraph (1) (A), so that the decontrol is effected, retroactively if necessary, on the date recommended by the local board, but not before sixty days after the date of the receipt of such recommendation by the Housing Expediter: *Provided*, That during the period of ninety days beginning with the date on which such decontrol is effected, the provisions of section 209 of this title shall be in effect as though such decontrol had not been effected; and

"(B) if it is with respect to a matter referred to in paragraph (1) (B), so that the adjustment in maximum rents is effected, retroactively if necessary, on the date recommended by the local board, but not before thirty days after the receipt of the recommendation by the Housing Expediter.

"(6) In addition to employees furnished under paragraph (2), local boards are hereby authorized to employ such attorneys as may be necessary for purposes of hearings and court proceedings under this

Continued on page 34

under such Act on March 1, 1947. Each such Board shall consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Gov-

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Footnote 5 continued
subsection; and may pay the necessary costs of reporting hearings, but the cost of stenographic services in reporting such hearings shall not be in excess of twenty-five cents per hundred words, with one additional copy at a cost of not exceeding five cents per hundred words. Attorneys shall be paid not to exceed $25 per day when actually employed, and shall be allowed necessary traveling and subsistence expenses.

"(7) Immediately upon the enactment of the Housing and Rent Act of 1948 the Housing Expediter shall communicate with the Governors of the several States advising them of the provisions of this subsection as amended and of the number and location of defense-rental areas in their respective States and the areas or portions thereof in which boards are to be appointed therein, and requesting the cooperation of the Governors of the several States in carrying out such provisions."

The original subsection read as follows:

"SEC. 204 (e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

"(A) Decontrol of the defense-rental area or any portion thereof;

"(B) The adequacy of the general rent level in the area; and

"(C) Operations generally of the local rent office, with particular reference to hardship cases.

"(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

"(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

"(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carrying out such provisions."

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ernors: *Provided*, That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948) from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area; and before recommending any such adjustment the board shall give notice to the parties and shall hold a hearing at the request of either party. Upon petition by a representative group of tenants or landlords, the board, if it finds that the petition is substantial in character, shall hold a public hearing in accordance with the requirements set forth in paragraph (4) of this subsection on any of the matters set forth in subparagraphs (A) and (B) of this paragraph. Such hearing shall be begun within thirty days after the filing of such petition, and shall be completed within thirty days after it is begun. Should the board for any reason fail to hold such hearing, the Housing Expediter, upon notice of that fact given by such group, shall (unless he finds that the petition is not substantial in character) hold a public hearing in like manner on such matters. Such hearing shall be begun within thirty days after the giving of such notice by such

group, and shall be completed within thirty days after it is begun. If the Housing Expediter finds that such petition is not substantial in character, such group may file a complaint with the Emergency Court of Appeals within thirty days after the date such finding is made. Thereupon, if it finds that the Housing Expediter's finding is not in accordance with law, the Emergency Court of Appeals shall have jurisdiction to enter, within thirty days after the date of filing of such complaint, an order directing the Housing Expediter to hold such hearing. If a hearing is held by either the board or the Housing Expediter, a recommendation by the board of decision by the Housing Expediter, as the case may be, on the merits of the matter shall be rendered within thirty days from the date of completion of such hearing, and the local board forthwith shall forward its recommendation to the Housing Expediter. Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations with such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any por-

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tion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

(C) Operations generally of the local rent office with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space, stenographic assistance and reporting services for public hearings (including attendance fees) and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect. If the Housing Expediter approves or disapproves any recommendation of a local board he shall promptly notify the local board in writing of such action.

(4) For the purposes of paragraph (3) any recommendation of a local board as to a matter referred to in paragraph (1) (A) or (B) shall be deemed to be appropriately substantiated and in accordance with

applicable law and regulations, and shall be carried into effect as hereinafter provided—

(A) if the local board held a public hearing on such matter at which interested persons (including representatives of the State and of political subdivisions thereof) were given a reasonable opportunity to be heard, by pleadings or otherwise, with right to be represented by counsel;

(B) if notice of the date, time, place, and purpose of such hearing was given (i) in writing to the Governor of the State not less than fifteen days prior to such date, and (ii) by publication in a newspaper of general circulation in the area over which the local board has jurisdiction at least fifteen days prior to such date, and a second notice was given by publication in such a newspaper at least five days prior to such date;

(C) if a copy of the local board's recommendation was filed with the Governor of the State within five days after such recommendation was mailed to the Housing Expediter;

(D) if a record is made of the evidence adduced at the public hearing held by the local board, and the local board certifies and transmits to the Housing Expediter, with such recommendation, a transcript of such record, or of those parts of such record, upon which its recommendation is based and a written statement of its findings made upon the basis of such record; and

(E) if the record so certified and transmitted to the Housing Expediter contains adequate and substantial evidence to support the findings and recommendation of the local board.

Any representative group of interested parties or the local board may file a complaint concerning such recommendation with the Emergency Court of Appeals within thirty days after the date on which the

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Housing Expediter notifies the local board of his decision, or the date of the expiration of such thirty-day period, as the case may be. If the Housing Expediter holds the hearing, such group may file a complaint with the Emergency Court of Appeals within thirty days after the rendering of his decision, or within thirty days after the expiration of the time within which his decision should be made. A similar right of appeal shall be afforded in the event the Housing Expediter makes a decision as to a general adjustment or as to removal of maximum rents for any class of housing accommodations (other than for luxury housing accommodations under the second sentence of section 204 (c)) on his own initiative. The Clerk of the Emergency Court of Appeals shall notify the Housing Expediter in writing of the filing of any such complaint promptly after it has been so filed. Within fifteen days after the receipt of such notice by the Housing Expediter, the Housing Expediter shall file such recommendation or decision in the Emergency Court of Appeals, together with the record and statement of findings of the local board or of the Housing Expediter and such statement as the Housing Expediter may desire to make as to his views on the matter. The statement of the Housing Expediter may be accompanied by such supporting information as the Housing Expediter deems appropriate. Thereupon, the Emergency Court of Appeals shall have jurisdiction to enter, within sixty days after the date of its receipt of such recommendation or decision from the Housing Expediter (or within such additional period of not more than thirty days as the court may find necessary in exceptional cases), an order approving or disapproving the recommendation of the local board or decision of the Housing Expediter. The recommendation, record, and statement of findings of the local board or decision, record, and statement of findings of the Housing Expediter,

as the case may be, together with the statement and supporting information filed by the Housing Expediter, shall constitute the record before the court. If the court determines that the recommendation or decision is not in accordance with law, or that the evidence in the record before the court, including such additional evidence as may be adduced before the court, is not of sufficient weight to justify such recommendation or decision, the court shall enter an order disapproving such recommendation or decision; otherwise it shall enter an order approving such recommendation or decision. The judgment and decree of the court shall be final. The powers heretofore granted by law to the Emergency Court of Appeals are hereby continued for purposes of exercise of the jurisdiction granted by this subsection. The court shall prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction, under this paragraph. The Housing Expediter, the local board, representative groups of interested parties, and representatives of the State or States involved, shall be granted, to the extent determined by the court, an opportunity to be heard, by pleadings or otherwise, with right to be represented by counsel.

(5) Any recommendation to which paragraph (4) applies, if an order of disapproval thereof has not been entered by the Emergency Court of Appeals within the time prescribed in such paragraph, shall be carried out by the Housing Expediter—

(A) if it is with respect to a matter referred to in paragraph (1) (A), so that the decontrol is effected, retroactively if necessary, on the date recommended by the local board, but not before sixty days after the date of the receipt of such recommendation by the Housing Expediter: *Provided*, That during the period of ninety days beginning with the date on which such decontrol is effected,

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the regulations and orders with respect to practices relating to the recovery of possession of housing accommodations issued under section 209 of this title shall be in effect as though such decontrol had not been effected; and

(B) if it is with respect to a matter referred to in paragraph (1) (B), so that the adjustment in maximum rents is effected, retroactively if necessary, on the date recommended by the local board, but not before thirty days after the receipt of the recommendation by the Housing Expediter.

(6) In addition to employees furnished under paragraph (2), local boards are hereby authorized to employ such attorneys as may be necessary for purposes of hearings and court proceedings under this subsection. Attorneys shall be paid not to exceed $25 per day when actually employed, and shall be allowed necessary travelling and subsistence expenses.

(7) Immediately upon the enactment of the Housing and Rent Act of 1948 the Housing Expediter shall communicate with the Governors of the several States advising them of the provisions of this subsection as amended and of the number and location of defense-rental areas in their respective States and the areas or portions thereof in which boards are to be appointed therein, and requesting the cooperation of the Governors of the several States in carrying out such provisions.

(f)[6] The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of

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[6] This subsection was amended by section 203 (g), Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 202 (e), Public Law 464, 80th Congress, this subsection read as follows:

"SEC. 204 (f) The provisions of this title shall cease to be in effect at the close of March 31, 1949."

The original subsection was amended by section 2, Public Law 422, 80th Congress, to substitute "at the close of March 31, 1948" for "on February 29, 1948." The original subsection read as follows: "SEC. 204 (f) The provisions of this title shall cease to be in effect on February 29, 1948."

a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.

(g)[7] Nothing in this title shall be interpreted or construed to authorize the Housing Expediter to prohibit, in the case of any rental agreement hereafter entered into, the demand, collection, or retention of a security deposit, if said deposit does not exceed the rent for one month in addition to the otherwise authorized collection of rent in advance, if the demand, collection, or retention of such a security deposit was an accepted rental practice, prior to January 30, 1942, in the area in which the premises are located, or was customarily required before that date by the same landlord in the renting of the particular housing accommodations involved, and if the tenant is allowed, under the terms of the rental agreement, to occupy the premises for the period covered by the security deposit without further payment of rent.

(h)[8] For controlled housing accommodations which were not included within the definition of "controlled housing accommodations" as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the maximum rent last in effect for such housing accommodations under Fed-

[7] This subsection was added by section 202 (f), Public Law 464, 80th Congress.
[8] This subsection was added by Section 203 (h), Public Law 31, 81st Congress.

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eral rent control, plus or minus applicable adjustments; or, if no maximum rent was ever in effect for such housing accommodations, the maximum rent shall be the rent generally prevailing in the defense-rental area for comparable controlled housing accommodations within such area, plus or minus applicable adjustments: *Provided,* That in the case of those controlled housing accommodations in hotels which were not included within the definition of "controlled housing accommodations" as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the rent in effect for such accommodations on March 1, 1949.

(i)* (1) Whenever a local advisory board in any defense-rental area in which maximum rents were never regulated under the Emergency Price Control Act of 1942, as amended, after having determined, with respect to the area over which it has jurisdiction or any portion thereof, either that (A) a scarcity of rental housing has developed as a result of national defense activity, or (B) employment or other conditions have changed to such an extent as to make the supply of rental housing inadequate to meet the demand, or (C) rents have increased or are about to increase unreasonably, recommends that such action is necessary or appropriate in order to effectuate the purposes of this title, the Housing Expediter, if such recommendation is appropriately substantiated, shall by regulation or order establish such maximum rent or maximum rents for any housing accommodations (except those not included within the definition of "controlled housing accommodations") in such area or portion thereof as in his judgment will be fair and equitable. In establishing any maximum rent for any housing accommoda-

*This subsection was added by section 203 (h), Public Law 31, 81st Congress.

tions under this paragraph, the Housing Expediter shall give due consideration to the rents prevailing for such housing accommodations, or comparable housing accommodations, on such date as he deems appropriate, not earlier than the date of the enactment of the Housing and Rent Act of 1949, and he shall make adjustment for such relevant factors as he shall determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. For the purposes of this paragraph the term "defense-rental area" means any part of an area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rent for housing accommodations inconsistent with the purposes of such Act.

(2) Whenever a local advisory board in any defense-rental area in which housing accommodations were decontrolled by administrative action taken, prior to the date of the enactment of the Housing and Rent Act of 1949, under the Emergency Price Control Act of 1942, as amended, or under this title, after having determined with respect to the area over which it has jurisdiction, or any portion thereof, either that (A) a scarcity of rental housing has developed as a result of national defense activity, or (B) employment or other conditions have changed to such an extent as to make the supply of rental housing inadequate to meet the demand, or (C) rents have increased or are about to increase unreasonably, recommends that such action is necessary or appropriate in order to effectuate the purposes of this title, the Housing Expediter, if such recommendation is appropriately substantiated, shall by regulation or order reestablish maximum rents for

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any or all such housing accommodations in such area or portion thereof. For the purposes of this paragraph the term "defense-rental area" has the meaning assigned to such term in paragraph (1) of this subsection.

(3) Any local advisory board may recommend to the Housing Expediter that he exercise the authority granted to him by paragraph (4) of this subsection to reestablish maximum rents for any or all housing accommodations, within the defense-rental area over which such board has jurisdiction, which are decontrolled on or after the date of the enactment of the Housing and Rent Act of 1949, by administrative action taken under this title.

(4) The Housing Expediter, upon recommendation of a local advisory board or upon his own initiative, whenever in his judgment such action is necessary or proper in order to effectuate the purposes of this title, may by regulation or order reestablish maximum rents for any or all controlled housing accommodations, in any defense-rental area, which are decontrolled on or after the date of the enactment of the Housing and Rent Act of 1949, by administrative action taken under this title.

(5) In the case of housing accommodations for which a maximum rent is reestablished pursuant to paragraph (2) or (4) of this subsection, the maximum rent shall be the maximum rent last in effect for such housing accommodations under Federal rent control, plus or minus applicable adjustments; or, if no maximum rent was ever in effect for such housing accommodations, the maximum rent shall be the rent generally prevailing for comparable controlled housing accommodations within such area, plus or minus applicable adjustments.

(6) No maximum rents shall be established or reestablished under this subsection for any housing accommodations (A) in the case of which maximum rents have been heretofore or are hereafter removed as the result of approval by the Emergency Court of Appeals of a recommendation of a local advisory board or as the result of approval by such court of a decision of the Housing Expediter, or (B) in any State, city, town, village, or locality in which rent controls under this title have been terminated pursuant to section 204 (j).

(j)[10] (1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State rent control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rents controls under this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has

[10] This subsection was added by section 203 (h), Public Law 31, 81st Congress.

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been so advised. At the same time all rent controls under this act, as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to required rent control in such city, town or village: *Provided, however,* That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further,* That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

SEC. 206[11] (a) It shall be unlawful for any person to demand, accept or receive any rent for the use or

[11] This section was amended by section 205, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 203, Public Law 464, 80th Congress, this section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a

Continued on page 48

occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Footnote 11 continued
showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The original section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

SEC. 209[12] Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing

[12] This section was amended by section 206, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 204, Public Law 464, 80th Congress, this section read as follows:

"SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

"(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

"(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations, or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family, or, in the case of a landlord which is an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, or the immediate and personal use and occupancy as housing accommodations of members of its staff: *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises; but this proviso shall not apply where such corporation or association acquires or leases such structure or premises after the effective date of the Housing and Rent Act of 1948 pursuant to a contract entered into prior to such date;

"(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

"(4) the landlord seeks in good faith to recover possession of such housing accommodations (A) for the immediate purpose of substantially altering or remodeling the same for continued use as housing accommodations, or for the immediate purpose of conversion into additional housing accommodations, and the altering, remodeling, or conversion cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by

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practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

Footnote 12 continued
Federal, State, or local law for the alterations, remodeling, or any conversion planned, or (B) for the immediate purpose of demolishing such housing accommodations;

"(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

"(6) the housing accommodations have been acquired by a State of any political subdivision thereof for the purpose of making a public improvement and are rented temporarily pending the construction of such improvement.

"(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

"(c) No tenant shall be obliged to surrender possession of any housing accommodations pursuant to the provisions of paragraph (2), (3), (4), (5), or (6) of subsection (a) until the expiration of at least sixty days after written notice from the landlord that he desires to recover possession of such housing accommodations for one of the purposes specified in such paragraphs."

The original section read as follows:

"SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

"(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

"(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

"(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

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SEC. 303. If any provision of this Act, or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Footnote 12 continued

"(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

"(5) the housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

"(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities exceeds the allowable maximum."

In the District Court of the United States
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA, *Plaintiff*, vs. SHORELINE COOPERATIVE APARTMENTS, INC., a corporation, *et al.*, *Defendants.*	Civil Action No. 48 C 1023

Statement Directing Attention of Defendants to Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States

Pursuant to Rule 12(2) of the Rules of the Supreme Court of the United States, as amended, the United States of America, plaintiff herein, hereby directs the attention of the defendants, and each of them, in the above entitled cause of action, to the provisions of Paragraph 3 of Rule 12 of said Rules. Said Paragraph 3 of Rule 12 is in words and figures as follows, to-wit:

> "Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a mo-

tion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

Dated at Chicago, Illinois this 23d day of August, 1949.

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